

FILED

OCT 17 1995

HOWARD HANSON
MARIN COUNTY CLERK
by J. Steele, Deputy

1 Andrew K. Wilson, SBN 063209
WILSON, RYAN & CAMPILONGO
2 115 Sansone Street
Fourth Floor
3 San Francisco, California 94104
(415) 391-3900
4 Telefax: (415) 984-0938

5 Laurie J. Bartilson, SBN 139220
MOXON & BARTILSON
6 6255 Sunset Boulevard, Suite 2000
Hollywood, CA 90028
7 (213) 960-1936
8 Telefax: (213) 983-3351

9 Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

CAW

11 SUPERIOR COURT OF THE STATE OF
12 FOR THE COUNTY OF MARIN

13	CHURCH OF SCIENTOLOGY	)	CASE NO. BC 357680
14	INTERNATIONAL, a California not-)	
15	for-profit religious corporation,	)	[PROPOSED]
16		)	ORDER OF SUMMARY JUDGMENT
17	Plaintiff,	)	AS TO THE THIRTEENTH,
18		)	SIXTEENTH, SEVENTEENTH, AND
19	vs.	)	NINETEENTH CAUSES OF ACTION
20)	
21	GERALD ARMSTRONG; DOCS 1 through	)	DATE: October 6, 1995
22	25, inclusive,	)	TIME: 9:00 a.m.
23		)	DEPT: 1
24	Defendants.	)	TRIAL DATE: Vacated

24 This matter came on for hearing on October 6, 1995, on
25 motion of plaintiff Church of Scientology International ("the
26 Church") for Summary Adjudication of the Thirteenth, sixteenth,
27 Seventeenth, and Nineteenth Causes of Action of the Second
28 Amended Complaint. Plaintiff Church of Scientology International

1 appeared by its attorneys, Andrew H. Wilson of Wilson, Ryan &
2 Campilongo and Lauria J. Bartilson of Bowles & Moxon, defendant
3 Armstrong appeared by his attorney, Ford Greene. Having read and
4 considered the moving and opposing papers, and the evidence and
5 arguments presented therein and at the hearing, and good cause
6 appearing:

7 IT IS ORDERED:

8 1. The Motion of Plaintiff for Summary Adjudication of
9 Issues as to the Thirteenth, Sixteenth, Seventeenth, and
10 Nineteenth Causes of Action of the Second Amended Complaint is
11 GRANTED in favor of Plaintiff, Church of Scientology
12 International, and against Defendant, Gerald Armstrong, in the
13 amount of \$200,000.

14 Plaintiff has met its burden of showing that defendant
15 breached the settlement agreement and that it is entitled to
16 liquidated damages of \$50,000 for each breach. Defendant has
17 failed to raise a triable issue as to any of the causes of
18 action, as follows:

19 INVALIDITY OF LIQUIDATED DAMAGES PROVISION: Defendant's
20 evidence regarding his attorneys' failure to represent his
21 interests (see Facts 43 and 68) is hearsay and/or not based on
22 personal knowledge. The opinion of defendant's attorney as to
23 the validity of the provision (see, e.g., Facts 52-54, 57-60) is
24 irrelevant and hearsay. The fact that two other clients signed a
25 settlement agreement containing the same liquidated damages
26 amount (see Facts 55-56 and 63-64) does not raise an inference
27 that the provision was unreasonable. Defendant's evidence is
28 insufficient to raise a reasonable inference of unequal

1 bargaining power (no personal knowledge shown that plaintiff, as
2 opposed to Flynn, positioned defendant as a "deal breaker");
3 Flynn's statements hearsay; no personal knowledge shown of
4 plaintiff's wealth; wealth alone does not raise inference of
5 unequal bargaining power since no showing defendant desperate for
6 money and had to accept on plaintiff's terms); Defendant's
7 evidence does not raise an inference that plaintiff's calculation
8 is "unfathomable" (Fourteenth Cause of Action seeks \$50,000 for
9 each of 18 letters; Nineteenth Cause of Action is based only on
10 declarations, not on other contacts between defendant and
11 attorney/other clients). Defendant fails to establish how he
12 knows plaintiff had not been injured by his statements at the
13 time of settlement.

14 **DURESS:** Flynn's statements to defendant are hearsay. (See,
15 e.g., D's Facts 1C and 1D.) Further, defendant has not shown
16 that plaintiff was aware of Flynn's purported duress of
17 defendant. (See *Leeper v. Beltrami* (1959) 51 Cal.2d 195, 206.)
18 Contrary to defendant's statement about duress, "careful weighing
19 of options" is completely inconsistent with an absence "of the
20 free exercise of his will power" or his having "no reasonable
21 alternative to succumbing." (See *Philippine Export & Foreign
22 Loan Guarantee Corp. v. Chuidian* (1990) 218 Cal.App.3D 1058,
23 1078; *In Re Marriage of Baltins* (1989) 212 Cal.App.3D 66, 84.)

24 **FRAUD:** Flynn's statements to defendant (see Fact 78) are
25 hearsay. The Court finds that the portions of the agreement
26 cited by defendant (see Facts 79 and 80) do not establish a
27 mutual confidentiality requirement. Paragraph 7(I) only
28 prohibits the parties from disclosing information in litigation

1 between the parties; paragraph 18(D) only prohibits disclosure of
 2 the terms of the settlement; defendant has not shown that
 3 plaintiff did either of those things. Further, "[s]omething more
 4 than nonperformance is required to prove the defendant's
 5 intention not to perform his promise." (Tansar v. Superscope,
 6 Inc. (1985) 39 Cal.3d 18, 30-31).

7 NO SPECIFIC PERFORMANCE, BREACH OF EXPRESS AND IMPLIED
 8 COVENANT: Defendant relies on the purported mutuality
 9 requirement, which he has failed to establish.

10 FIRST AMENDMENT: First Amendment rights may be waived by
 11 contract. (See *ITT Telecom Products Corp. v. Dooley* (1989) 214
 12 Cal.App.3d 307, 319.)

13 2. The plaintiff has asked that the exhibits which were
 14 previously ordered sealed be stricken as they are trade secrets,
 15 irrelevant to this motion. This request is GRANTED. They are
 16 not relevant. Further, they were filed by Mr. Armstrong in pro
 17 per when he is, in fact, represented by counsel.

18 Dated: October __, 1995

19 OCT 17 1995

20 GARY W. THOMAS

21 _____
 22 GARY W. THOMAS
 23 Judge of the Superior Court

24 Approved as to form:

25 _____
 26 Ford Greene
 27 Attorney for Defendants Gerald
 28 Armstrong and the Gerald Armstrong
 Corporation